193 FERC ¶ 61,213
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Laura V. Swett, Chairman;
David Rosner, Lindsay S. See,
Judy W. Chang, and David LaCerte.

Matterhorn Express Pipeline, LLC

Docket Nos. PR25-11-002
PR25-11-001
PR25-11-000

ORDER ON REHEARING, MOTION FOR STAY, AND COMPLIANCE

(Issued December 18, 2025)

1. On June 2, 2025, the Commission accepted, subject to condition, Matterhorn Express Pipeline, LLC's (Matterhorn) baseline Statement of Operating Conditions (SOC)[1] and petition to establish initial system rates for Natural Gas Policy Act of 1978 (NGPA) section 311 services,[2] effective October 1, 2024.[3]

2. On June 11, 2025, Matterhorn filed a request for stay or alternatively, waiver of the SOC Order. On July 2, 2025, Matterhorn separately submitted a request for rehearing of the SOC Order and a compliance filing in response to the SOC Order.

[1] Matterhorn Express Pipeline, LLC, Tariffs, Statement of Operating Conditions (0.0.0). Under 18 C.F.R. § 284.123(e) (2025) any intrastate pipeline that engages in transportation arrangements under Subpart C of Part 284 of the Commission's regulations must file with the Commission a statement that includes the pipeline's interstate rates, the rate election made pursuant to § 284.123(b) of that part, and a description of how the pipeline will engage in these transportation agreements, including operating conditions, such as gas quality standards and the creditworthiness of the shipper, which is often referred to as a pipeline's Statement of Operating Conditions.

[2] "The Commission may, by rule or order, authorize any intrastate pipeline to transport natural gas on behalf of any interstate pipeline; and any local distribution company [LDC] served by any interstate pipeline." 15 U.S.C. § 3371(a)(2) (NGPA section 311).

[3] *Matterhorn Express Pipeline, LLC*, 191 FERC ¶ 61,186 (2025) (SOC Order).

3. Pursuant to *Allegheny Defense Project v. FERC*,[4] the rehearing request filed in this proceeding may be deemed denied by operation of law. However, as permitted by section 506 of the NGPA,[5] we are modifying the discussion in the SOC Order, as discussed below.[6] We also dismiss Matterhorn's request for stay or alternatively, waiver, as moot. We also reject Matterhorn's compliance filing and direct Matterhorn to submit a further compliance filing within 30 days of the date of this order.

I. Background and Filing

4. Matterhorn is a new intrastate pipeline that offers firm, interruptible, authorized overrun, and park and loan services in the state of Texas, subject to the jurisdiction of the Railroad Commission of Texas (RRCT). Matterhorn states that its mainline pipeline originates at the Waha Hub near Coyanosa, Texas, and terminates in Wharton County, Texas and has a transportation capacity of 1,285,000 million British thermal units (MMBtu) per day.[7] Matterhorn also explains that its system has two shorter laterals and four compressor stations.[8]

5. On October 31, 2024, Matterhorn filed a petition to establish initial system rates for NGPA section 311 transportation service with the Commission on the Matterhorn pipeline system, within 30 days of commencing such service on October 1, 2024, consistent with Commission regulations.[9] Specifically, Matterhorn proposed to base its initial rates for

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[4] 964 F.3d 1 (D.C. Cir. 2020) (en banc).

[5] 15 U.S.C. § 3416(a)(3) ("At any time before the filing of the record of a proceeding in a United States Court of Appeals, pursuant to paragraph (4), the Commission may, after providing notice it determines reasonable and proper, modify or set aside, in whole or in part, any order issued under the provisions of this chapter.").

[6] *Allegheny Def. Project*, 964 F.3d at 16-17. The Commission is not changing the outcome of the SOC Order. *See Smith Lake Improvement & Stakeholders Ass'n v. FERC*, 809 F.3d 55, 56-57 (D.C. Cir. 2015).

[7] Matterhorn Petition at 2 & app. B.

[8] *Id*. at 2.

[9] 18 C.F.R. § 284.123(e) ("Within 30 days of commencement of new service, any intrastate pipeline that engages in transportation arrangements under this subpart must file with the Commission a statement that includes the pipeline's interstate rates, the rate election made pursuant to paragraph (b) of this section, and a description of how the pipeline will engage in these transportation arrangements, including operating conditions…."); *Revisions to Procedural Reguls. Governing Transp. by Intrastate Pipelines*, Order No. 781, 144 FERC ¶ 61,034, at P 6 (2013). *Regency Intrastate Gas LP*, 172 FERC ¶ 61,187, at P 1 n.4 (2020)

NGPA section 311 service on a rate for intrastate service on file with the RRCT, the state regulatory agency that oversees the operation of Matterhorn, consistent with section 284.123(b)(1)(ii) of the Commission's regulations.[10] In support of its initial rates, Matterhorn submitted the RRCT approval order for its filed rates, as well as the cost-of-service study and associated witness testimonies it filed with the RRCT. Matterhorn also provided a baseline SOC for NGPA section 311 service.

6. Matterhorn's proposed initial rates included a maximum one-part volumetric rate of $0.89 per MMBtu plus in-kind retention of actual system fuel and lost and unaccounted for gas for firm, interruptible, authorized overrun, and park and loan transportation services.[11] Matterhorn did not propose a usage charge[12] for its firm transportation service.[13] Matterhorn's proposal also included a $0.000 per MMBtu minimum rate for all of its transportation services.[14]

A. SOC Order

7. On June 2, 2025, the Commission issued an order accepting Matterhorn's baseline SOC, subject to conditions. Specifically, the Commission found that the non-rate provisions of Matterhorn's baseline SOC are fair and equitable, but disapproved of the proposed initial rates on two related grounds.[15]

8. First, with respect to Matterhorn's proposed initial rates for firm, interruptible, authorized overrun, and park and loan services, the Commission found that Matterhorn met the procedural requirements for its state-approved rates to receive a rebuttable

("Unlike under the Natural Gas Act (NGA), under the NGPA, pipelines generally commence new services *before* filing with the Commission.").

[10] Matterhorn Petition at 1.

[11] *Id.*, app. C (NGPA Section 311 Statement of Operation Conditions) at Ex. B to Statement of Operating Conditions.

[12] In this order, the terms demand charge and reservation charge can be used interchangeably, as can the terms usage charge and commodity charge.

[13] Matterhorn Petition at 5.

[14] *I Id.*, app. C (NGPA Section 311 Statement of Operating Conditions) at Ex. B to Statement of Operating Conditions.

[15] SOC Order, 191 FERC ¶ 61,186 at P 6.

presumption of being fair and equitable.[16] However, the Commission found that record evidence rebutted that presumption. In particular, the Commission found that Matterhorn failed to use a Straight-Fixed Variable (SFV) rate design in establishing its initial rates and/or failed to provide a reason justifying its departure from the use of the SFV methodology in establishing these rates.[17] The Commission explained that a pipeline must charge a firm rate that recovers fixed costs from the demand component and variable costs from the usage component of its rates under the SFV methodology.[18] Second, the Commission found that Matterhorn impermissibly set a minimum rate of zero despite Matterhorn having variable costs.[19] The Commission found that if a pipeline incurs variable costs, the minimum rate must be based on the average variable costs that are properly allocated to the service to which the rate applies.[20] The Commission explained that although the regulations governing the minimum rate and SFV were written for NGA pipelines, following *ANR Pipeline Co. v. FERC*,[21] the underlying principles also apply to NGPA pipelines that do not qualify for an exception from SFV ratemaking.[22] The Commission stated that charging less than the minimum rate (less than the average variable costs) constitutes predatory pricing.[23] The Commission also stated that rate designs that depart from the SFV methodology without justification are not "fair and equitable" under NGPA section 311(a)(2)(B)(i) per the Commission's longstanding policy.[24]

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[16] *Id.* P 6.

[17] *Id.* PP 6, 11-12.

[18] *Id.* P 11.

[19] *Id.* PP 13-15.

[20] *Id.* P 15 (citing 18 C.F.R. § 284.10(c)(4)(ii) (2024); 18 C.F.R. § 284.7(e) ("A reservation fee may not recover any variable costs or fixed costs not attributable to the firm transportation service.").

[21] 71 F.3d 897 (D.C. Cir. 1995) (*ANR v. FERC*).

[22] SOC Order, 191 FERC ¶ 61,186 at P 15 n.45.

[23] *Id.* P 13.

[24] *Id.* P 6 (citing *ANR v. FERC*, 71 F.3d at 902; *Indep. Pipeline Co.*, 89 FERC ¶ 61,283, at 61,847 (1999); *Mustang Energy Corp. v. FERC*, 859 F.2d 1447, 1454-57 (10th Cir. 1988) (*Mustang v. FERC*)).

9. The Commission accepted Matterhorn's proposed baseline SOC effective October 1, 2024, as requested, subject to the condition that Matterhorn revise its initial rates.[25] The Commission directed Matterhorn to revise its initial rates using the Commission's SFV methodology based on the supporting cost and revenue evidence on file with the RRCT.[26] The Commission provided a non-binding, illustrative example in an appendix to the SOC Order demonstrating how Matterhorn could derive maximum and minimum rates using the SFV methodology and explained that Matterhorn was not obligated to reach the same result.[27]

B. Motion for Stay

10. On June 11, 2025, Matterhorn filed an expedited motion requesting that the Commission stay the effectiveness of the directives in Ordering Paragraph (B) of the SOC Order or, in the alternative, grant waiver of the deadline for complying with Ordering Paragraph (B) until after the Commission has ruled on the merits of Matterhorn's forthcoming request for rehearing.[28] Matterhorn explains that its petition was not protested and that its motion is unopposed.[29]

C. Compliance Filing

11. On July 2, 2025, Matterhorn submitted a compliance filing, under protest, to implement the directives of the SOC Order. Specifically, Matterhorn states that its filing includes an updated statement of rates that adopts the illustrative SFV rates set forth in Table 4 of the SOC Order Appendix.[30] Matterhorn explains that its revised statement of rates sets forth minimum rates for Matterhorn's section 311 firm, interruptible, authorized overrun, and park and loan services of $0.0207 per MMBtu, in lieu of its proposed

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[25] *Id.* PP 6, 15, ordering para. (B).

[26] The Commission further found that, upon establishing its rates on compliance, Matterhorn must also ensure its jurisdictional contract rates are confined to the new minimum and maximum recourse rates. *E.g., N. Ill. Gas Co.*, 95 FERC ¶ 61,452 (2001); *Bay Gas Storage Co.*, 131 FERC ¶ 61,034, at PP 26, 36 (2010) (*Bay Gas*).

[27] SOC Order, 191 FERC ¶ 61,186 at P 16, app.

[28] Matterhorn Motion for Stay at 3. Matterhorn also sought waiver of Rule 213, 18 C.F.R. § 385.213, which permits 15 days for other parties to file an answer to a pleading. *Id*. at 17-18.

[29] Matterhorn Motion for Stay at 3, 18.

[30] Matterhorn Compliance Filing at 3.

$0.000 minimum rates, and sets the maximum rates of $0.8022 per MMBtu per day. Matterhorn explains that its compliance filing also implements housekeeping changes.[31] Matterhorn requests that the Commission accept the revisions, effective October 1, 2024.

D. Rehearing Request

12. On rehearing, Matterhorn argues that the Commission erred by rejecting Matterhorn's proposed NGPA section 311 initial rates in the SOC Order. Specifically, Matterhorn contends that the Commission erred by: (1) finding that the SFV methodology, including the requirement to file minimum rates, applies to NGPA pipelines; (2) departing from the NGPA framework and Commission regulations in processing Matterhorn's proposed rates; (3) applying the SFV requirement to Matterhorn in an unduly discriminatory manner; and (4) creating a new rule and applying it retroactively, without notice.

II. Discussion

13. We continue to find that Matterhorn's state-approved rates are entitled to a rebuttable presumption of being fair and equitable, but that the record in this proceeding rebuts that presumption.[32] In particular, we sustain the Commission's finding that Matterhorn must revise its rates to use the SFV methodology and a non-zero minimum rate.[33] Although Matterhorn asserts that the Commission deviated from its policy and precedent, the requirement to use the SFV methodology is grounded in both the history of the NGPA and relevant precedent.

14. In the 1970s, the natural gas market experienced a significant evolution, as natural gas was developing into a distinct commodity (in contrast to previously being viewed as predominantly a byproduct of oil) and the transportation of natural gas was growing into a highly competitive market due to physical and technological changes.[34] To account for

[31] *Id*.

[32] SOC Order, 191 FERC ¶ 61,186 at P 6.

[33] *Id.* PP 6, 15, ordering para. (B).

[34] *Pipeline Serv. Obligations & Revisions to Requisitions to Reguls. Concerning Self-Implementing Transp. Under Part 284 of the Comm'n's Regul.*, Order No. 636, FERC Stats. & Regs. 30,939, at 30,392 (1992) (cross-referenced 59 FERC ¶ 61,030), *reh'g granted in part & denied in part & clarified*, Order No. 636–A, FERC Stats. & Regs. ¶ 30,950, at 30,521 (1992) (cross-referenced 60 FERC ¶ 61,102), *reh'g denied*, Order No. 636-A, 60 FERC ¶ 61,102 (1992), *order on reh'g & clarification*, Order No. 636-B, 61 FERC ¶ 61,272 (1992) (expanding the open access program), *reh'g denied*, Order No. 636-C, 62 FERC ¶ 61,007, at 61,014 (1993). *See also Reg. of Nat.*

the evolving landscape, as relevant here, Congress adopted the NGPA in 1978, which removed most of the Commission's NGA jurisdiction to establish just and reasonable rates at the wellhead.[35] In particular, Congress removed the Commission's jurisdiction over the "first sales" of natural gas as a commodity, finding that producers of natural gas do not have "natural" monopoly power.[36]

15. Following the enactment of the NGPA, the Commission issued Order No. 436, which permitted the voluntary unbundling of pipeline transportation services from the sale of natural gas as a commodity. The intent of Order No. 436 was to "assure that commodity and transmission prices for natural gas between the wellhead and burner-tip are clear and accurate."[37] In other words, to facilitate competition, the Commission wanted transparent pricing such that the price of the natural gas (as a commodity) was separated from the charges associated with transporting natural gas.

16. Order No. 436 also established a requirement for a minimum rate, or a rate floor. Minimum rates provide cost transparency for shippers seeking to transport natural gas on a pipeline. Because natural gas pipelines offering transportation services are natural monopolies, they not only must provide open, non-discriminatory access[38] to their pipeline systems to all shippers or customers who meet the necessary requirements,[39] but

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Gas Pipelines After Partial Wellhead Decontrol, Order No. 436, FERC Stats. & Regs., ¶ 30,665, at 30,469-70 (1985) (cross-referenced at 33 FERC ¶ 61,007) ("Historically, pipelines have served as gas merchants-buying gas at the wellhead and selling it at the city gate to LDCs."); *id.* at 31,470 ("Moreover, as a result of physical and technological changes that have taken place as the industry has grown and matured over the last fifty years, a given supply of the natural gas commodity can now be transported—by front haul, back haul, exchange or displacement—to points throughout the continental United States. As a result, as a technical matter, producers of natural gas can market their supplies in an essentially national market while individual customers or resellers of gas (such as the local gas utilities) can obtain supplies from a variety of sources.").

[35] 15 U.S.C. § 3301 *et seq*.

[36] *See* Order No. 436, FERC Stats. & Regs. ¶ 30,665 at 30,469-70.

[37] *Id.*

[38] *See* Order No. 636, FERC Stats. & Regs. ¶ 30,939 at 30,396 ("Order No. 436 instituted open-access, non-discriminatory transportation to permit downstream gas users such as LDCs and industrials to buy gas directly from gas merchants in the production area and to ship that gas via the interstate pipelines.").

[39] As explained in Order No. 436, the minimum rate equals the variable costs of providing the service and the maximum rate serves as the pipeline's average cost of

also may not charge rates *below* the operational component of their cost of service.[40] Thus, minimum rates clearly set out a minimum recourse amount for pipelines to collect. Additionally, the Commission found in Order No. 436 that a minimum rate/rate floor serves an important purpose because it:

> is the economic test ordinarily used for determining when discount pricing becomes predatory pricing. A pipeline can never charge a customer less than the floor. Thus, a competitor of the pipeline or competitor of the customer receiving the discount need not fear that the pipeline will engage in transparent predatory pricing.[41]

Predatory pricing occurs when a firm is able to temporarily set an extremely low rate (i.e., even lower than the cost of service) such that it is able to drive out competitors from the market, which would then allow the firm to raise prices and recoup its initial losses, establishing a dominant or monopolistic position in the market.[42] Thus, the minimum rate serves as a check on pipelines engaging in anti-competitive behavior.[43]

17. After Congress in 1989 ordered the Commission to complete the restructuring of natural gas pipeline services, the Commission issued Order No. 636, which *required* the unbundling of the natural gas marketplace, with the goal of promoting competition and protecting gas customers.[44] Among other things, Order No. 636 also adopted the SFV methodology as a uniform rate design. Under the SFV methodology, "all of a pipeline's fixed transmission and storage costs are billed in the pipeline's reservation charge."[45] Separating reservation charges from usage charges facilitates consumers' review of the costs of the commodity and costs of the transportation. The Commission explained that

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providing service. *See* Order No. 436, FERC Stats. & Regs. ¶ 30,665 at 31,578.

[40] *See* Order No. 436, FERC Stats. & Regs. ¶ 30,665 at 31,541 ("to allow pipelines to provide service at a rate that does not even recover the variable costs of the service would be pure social waste"). The non-discrimination rule applies to NGPA section 311 pipelines. *Id*. at 31,497.

[41] *Id.* at 31,542.

[42] *Barry Wright Corp. v. ITT Grinnell Corp.*, 724 F.2d 227, 231 (1st Cir. 1983).

[43] Order No. 436, FERC Stats. & Regs. ¶ 30,665 at 31,541.

[44] Order No. 636, FERC Stats. & Regs. ¶ 30,939 at 30,393-94.

[45] *Id.* at 30,413.

"[u]nder SFV, all gas merchants would be able to compete in a national market without regard to fixed transportation costs included in the usage charges,"[46] thus "yield[ing] lower prices and more abundant supplies" to the benefit of all gas consumers.[47] The SFV methodology promotes transparency because a pipeline is unable to comingle variable costs and fixed costs in a single rate. The Commission further found that its adoption of SFV would further the national interest in promoting the use of natural gas over alternative fuels such as foreign oil, "allowing gas to compete with alternative fuels on a timely basis as the prices of alternative fuels change."[48] The Commission explained that using the SFV methodology appropriately achieves this goal by "using cost classification to design rates to influence the consumption of gas."[49] Finally, the Commission found that use of the SFV methodology would "promote more efficient gas contracting decisions."[50]

18. The Commission explicitly found in Order No. 636 that other rate design methods that placed fixed costs inside the usage charge were unjust and unreasonable.[51] While the Commission stated that it would consider deviations from the SFV methodology, it cautioned that "any party (or parties) advocating something other than SFV carries a heavy burden of persuasion."[52]

19. Later, following post-Order No. 636 litigation, the Commission made clear that the requirement to use the SFV methodology applies to NGPA section 311 pipelines electing rates pursuant to section 284.123(b)(1). In *ANR v. FERC*,[53] Michigan Consolidated Gas Company (MichCon), a local distribution company (LDC) also providing transportation and storage services pursuant to NGPA section 311, sought Commission approval to charge city-gate rates approved by the Michigan Public Service

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[46] *Id.* at 30,434. The Commission noted that "[o]nly a small amount of variable costs (such as fuel) would be in the firm transportation usage charge." *Id.* n.196.

[47] Order No. 636, FERC Stats. & Regs. ¶ 30,939 at 30,435 (quoting H.R. Rep. No. 29, 101st Cong., 1st Sess. 7 (1989)).

[48] *Id.* at 30,435.

[49] *Id.*

[50] *Id.* at 30,437.

[51] *Id.*

[52] *Id.* at 30,432.

[53] 71 F.3d 897.

Commission (Michigan PSC) pursuant to section 284.123(b)(1) of the Commission's regulations. MichCon proposed a "blended" rate wherein some of the fixed costs of providing transportation services were shifted to the volumetric/commodity component of the rate, which the Michigan PSC permitted.[54] ANR Pipeline Company (ANR), an interstate natural gas pipeline competitor, filed a protest arguing that as an interstate pipeline subject to NGA jurisdiction, it was required to use the SFV rate design promulgated by Order No. 636, and therefore, MichCon must also abide by that same requirement. ANR argued that not requiring MichCon to use the SFV methodology would put "MichCon at an unfair competitive advantage over interstate companies that provide the same service."[55] Specifically, ANR contended that permitting MichCon to blend its rate gave MichCon the ability to discount its reservation charge, while still recovering certain fixed costs through the usage component of its rate. In the *MichCon Rehearing Order*, the Commission declined to impose the SFV methodology on MichCon, stating that SFV is only required for *interstate* pipelines and not NGPA section 311 pipelines.[56] In fact, the Commission acknowledged that it had not specified any rate design for NGPA section 311 pipelines, despite the ability for intrastate pipelines to participate in the national gas market, and the Commission has not attempted to achieve complete uniformity between the rate designs of interstate and intrastate pipelines.[57] The Commission also rejected ANR's argument that the Commission should do more than approve or disapprove an intrastate pipeline's election under section 284.123(b)(1) and stated that by merely approving the rates already approved by a state regulatory agency, it will ensure that there will be no discrimination against the pipeline's interstate customers.[58]

20. In *ANR v. FERC*, the D.C. Circuit found that in light of the Commission's findings in Order No. 636, the Commission "must provide a reasonable justification for excluding MichCon from the SFV requirements, in view of FERC's conclusions about rate blending and about the necessity of the SFV rate method to promoting congressional directives for a national natural gas market."[59] On remand, the Commission found "that no basis has

[54] *Mich. Consol. Gas Co.*, 68 FERC ¶ 61,090 (1994) (*MichCon*).

[55] *Mich. Consol. Gas Co.*, 68 FERC ¶ 61,311 (1994) (*MichCon Rehearing Order*).

[56] *MichCon Rehearing Order*, 68 FERC at 62,293 ("[T]he Commission has not required that intra-state pipelines and LDCs transporting under NGPA section 311 also utilize an SFV rate design and it declines to do so here.").

[57] *Id*.

[58] *Id*.

[59] *ANR v. FERC*, 71 F.3d at 902.

been presented for permitting MichCon's proposed blended rate," and instead directed MichCon to revise its filing to reflect the SFV methodology.[60] In other words, the Commission found no reasonable justification to exclude MichCon, an NGPA pipeline which had elected rates pursuant to section 284.123(b)(1) of the Commission's regulations, from the SFV requirement. The SFV method has been applicable to NGPA pipelines since the *MichCon Remand Order*[61] in 1998, except in cases where the Commission finds a reasonable justification for an exemption.[62]

21. As the Commission explained in the SOC Order,[63] exceptions to the requirement to use the SFV methodology include: when the pipeline utilizes market-based rates, settlement rates, or *non*-recourse rates (such as discounted rates),[64] and where there is an unusual competitive circumstance.[65] Other exceptions include instances where a non-SFV rate serves as an optional alternative to the SFV recourse rate but not as an exception from SFV ratemaking (such that the NGPA pipeline still maintains an SFV recourse rate).[66] Additionally, the Commission has permitted exceptions to the SFV rate if the applicant "demonstrates that '[it] is operating in an area where competitors can charge rates based on rate designs other than SFV,' ***and*** where '[no] competitor or

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[60] *Mich. Consol. Gas Co.*, 85 FERC ¶ 61,080 (1998) (*MichCon Remand Order*).

[61] *Id.*

[62] *See, e.g., Mid Continent Mkt. Ctr., Inc. v. Panhandle E. Pipe Line Co.* 86 FERC ¶ 61,259 (1999) ("The Commission's order on remand from the *ANR* case noted specifically that, among the regulations adopted in Order No. 636, Section 284.8(d) reflects the Commission's current policy on the Straight Fixed Variable (SFV) methodology. . . Consistent with *ANR*, Market Center has the same burden under Order No. 636 as an interstate pipeline would have to justify a departure from SFV rate design.").

[63] SOC Order, 191 FERC ¶ 61,186 at P 10.

[64] The Commission allows NGPA section 311 pipelines to offer discounts from their recourse rates, but does not allow negotiated rates. Discount rates are cabined by the minimum and maximum rates established by the SFV-based recourse rate. *E.g., N. Ill. Gas Co.*, 95 FERC ¶ 61,452; *Bay Gas*, 131 FERC ¶ 61,034 at PP 26, 36.

[65] SOC Order, 191 FERC ¶ 61,186 at P 10 (citing *Regency Intrastate Gas LP*, 172 FERC ¶ 61,187 at PP 8-9).

[66] SOC Order, 191 FERC ¶ 61,186 at P 10 (citing *Regency Intrastate Gas LP*, 172 FERC ¶ 61,187 at PP 8-9).

customer has objected.'"[67] Both conditions are necessary – a mere lack of objections is insufficient. The rationale behind these exceptions is that because, in instances in which the natural gas pipeline proposes a rate that does not reflect the cost of service, the ability for shippers to compare rates for equivalent service is minimized, and thus a uniform method of calculating the rate is less pressing. Additionally, the Commission has also permitted an exception to the SFV methodology for Hinshaw LDCs.[68]

A. The SFV Methodology and Minimum Rate

1. Rehearing Request

22. On rehearing, Matterhorn contends that there is no published Commission policy, precedent, rulemaking, or regulation that requires the application of the SFV rate design methodology for intrastate pipelines providing NGPA section 311 service electing to rely on uncontested cost-based rates under section 284.123(b)(1) (or Section (b)(1)) of the Commission's regulations, nor does the Commission point to any in the SOC Order.[69]

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[67] SOC Order, 191 FERC ¶ 61,186 at P 10 (emphasis added) (citing *EPGT Tex. Pipeline, L.P.*, 99 FERC ¶ 61,295, at 62,251-52 (2002) (arguing that while operating in an area where interstate pipeline competitors can charge non-SFV rates, EPGT would be unable to attract firm customers unless it is also allowed non-SFV rates)).

[68] For example, Hinshaw LDCs would be exempt from the SFV methodology in instances where natural gas is moved by displacement, because the Hinshaw LDC would not be using compression and would be the only utility serving a defined market; thus, it would not gain a competitive advantage against another pipeline by utilizing a different rate structure than SFV. Another example of an exception to the SFV methodology may include instances when Hinshaw LDCs, which predominately serve small end-use retail customers, have an additional type or classification of fixed cost, such as the costs associated with adding customers for retail service, in comparison to a traditional pipeline which would not have such a need because it does not serve small end-use customers. Such Hinshaw LDCs would qualify for an exception to the SFV methodology because their rate structure would need to recover additional customer-related fixed costs. *See generally* Statement of Rates for: Atlanta Gas Light Company; Atmos Energy Corporation, Kentucky/Mid-States Division (Tennessee); Columbia Gas of Kentucky, Inc.; Columbia Gas of Maryland, Inc.; Columbia Gas of Ohio, Inc.; Columbia Gas of Pennsylvania, Inc.; Columbia Gas of Virginia Inc.; Northern Indiana Public Service Company; Intermountain Gas Company; Interstate Power and Light Company; Montana-Dakota Utilities Co.; and Northern States Power Company, a Minnesota corporation.

[69] Rehearing Request at 10, 11, 21-22, 24, 25, 30-31.

23. Matterhorn contends that *ANR v. FERC*[70] does not mandate the use of the SFV methodology for NGPA section 311 rates.[71] In fact, Matterhorn argues that in *Florida Gas Transmission Co.*, the Commission stated that "[i]n remanding the matter to the Commission, the Court of Appeals did not reject the Commission's decision to exempt [an intrastate pipeline] from the SFV requirement, but rather stated that the Commission must provide a reasonable justification for doing so."[72] Matterhorn contends that if *ANR v. FERC* required SFV rates for intrastate pipelines, the Commission has consistently violated this policy.[73]

24. Matterhorn also argues that the Commission's regulations do not support the application of the SFV methodology to Matterhorn's initial rates. Matterhorn alleges that the Commission's reasoning to apply the SFV rate design for NGPA section 311 pipelines blurs the lines between the Commission's NGA and NGPA regulatory oversight.[74] For example, Matterhorn argues that section 284.10(c)(4)(ii) of the Commission's regulations,[75] which requires that a pipeline file a minimum rate, should not apply to its NGPA filing.[76] Matterhorn asserts that section 284.10(c)(4)(ii) only applies to NGA pipelines, and the Commission explicitly chose not to extend these regulations to NGPA transportation.[77] Matterhorn also contends that the Commission has been inconsistent in its interpretation of this regulation. Matterhorn argues that the Commission stated that it must apply the underlying principles of requiring a minimum floor as outlined in section 284.10(c)(4)(ii) to NGPA pipelines, but that Commission

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[70] *ANR v. FERC*, 71 F.3d at 902.

[71] Rehearing Request at 23.

[72] *Id.* at 23-24 (quoting *Fla. Gas Transmission Co*., 77 FERC ¶ 61,152, at 61,599 (1996)). Matterhorn states that the Commission must thus provide a reasonable justification for differences in how it treats NGA and NGPA pipelines. *Id.* (citing *ONEOK WesTex Transmission, L.L.C.*, 161 FERC ¶ 61,128, at n.44 (2017) (citing *ANR v. FERC*, 71 F.3d at 902)).

[73] Rehearing Request at 24. *See also infra* PP 53-56.

[74] Rehearing Request at 2.

[75] 18 C.F.R. § 284.10(c)(4)(ii).

[76] Rehearing Request at 7, 23-24.

[77] *Id.* at 22-23 (citing Order No. 636-B, 61 FERC at 61,992 n.26 (stating that "Order No. 636 applies only to pipelines operating under Part 284, except that it does not apply to intrastate pipelines")).

precedent states that a minimum floor is not required for NGPA pipelines.[78] Thus, Matterhorn contends that the Commission departs from its own precedent, which rejected the notion that the NGPA requires the Commission to set a floor for intrastate rates where the pipeline itself proposes to collect less than its costs, and instead, should defer to state regulatory authorities for setting rates.[79]

25. Matterhorn states that in the SOC Order, the Commission erred in finding that a minimum rate of zero would enable Matterhorn to engage in predatory pricing.[80] Matterhorn argues that "predatory pricing" is a concept under the NGA that does not apply to NGPA pipelines.[81] In particular, Matterhorn explains that it operates in competitive markets for both pipeline transportation and underground natural gas storage,[82] and because its operator in Texas has a relatively small footprint compared to incumbent pipelines, it lacks the market power that would permit it to engage in anticompetitive behavior.[83] Matterhorn states that these facts undermine the factors set forth in the Commission's multi-pronged inquiry into whether actions can be construed as predatory pricing.[84] Thus, Matterhorn argues that the Commission's finding that

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[78] Rehearing Request at 23 (citing *Phenix Transmission Co.*, 32 FERC ¶ 61,096, at 61,263 (1985) ("reject[ing] the notion that the NGPA requires the Commission to set a floor for intrastate rates where the pipeline itself proposes to collect less than its costs support," and deferring to state regulatory authorities should "an intrastate pipeline choose[] to charge less than its full cost of service.").

[79] *Id.* (citing *Phenix Transmission Co.*, 32 FERC at 61,263).

[80] Rehearing Request at 27-30 (citing SOC Order, 191 FERC ¶ 61,186 at P 13; *Mkt.-Based Rates for Wholesale Sales of Elec. Energy, Capacity & Ancillary Servs. by Pub. Utilities*, Order No. 697-A, 123 FERC ¶ 61,055, at P 284 (2008)); *id*. at 9 (asserting that the Commission erred by ordering a remedy based on an alleged harm that is not supported by substantial evidence).

[81] *Id.* at 27.

[82] *Id.* at 29 (citing *Golden Triangle Storage, LLC*, 188 FERC ¶ 61,052 (2024); *Waha Gas Storage, LLC*, 180 FERC ¶ 61,212, *errata issued*, 181 FERC ¶ 61,006 (2022); *Tres Palacios Gas Storage Inc.*, 153 FERC ¶ 61,331 (2015)).

[83] *Id.* at 29.

[84] *Id.* at 27-28, 29. Specifically, Matterhorn states that the Commission's predatory pricing analysis includes: whether "a business rival has priced its products in an unfair manner with an object to eliminate or retard competition and thereby gain and exercise control over prices in the relevant market;" (2) whether the "competitor had a reasonable prospect of recouping its investment in below-cost prices in the form of later

Matterhorn's minimum rate of zero facilitates predatory pricing is not supported by substantial evidence demonstrating Matterhorn has the market power or intent to engage in such conduct.[85]

26. Matterhorn also states that the Commission's policy towards the SFV methodology has changed over time.[86] Matterhorn argues that since *ANR v. FERC*, the Commission has incorporated more flexible rules for NGA pipeline rates by creating alternative ratemaking schemes that were not available when *ANR v. FERC* was decided[87] and even moved to loosen its oversight of NGPA pipelines.[88] In fact, Matterhorn contends that the Commission's most recent rulemaking that revised its Part 284 regulations applicable to NGPA section 311 pipelines did not discuss SFV rates, and created an expedited review process to deem unprotested rates to be fair and equitable.[89]

27. Matterhorn asserts that if the SFV methodology applies, it should be granted one of the exceptions from SFV ratemaking listed in the SOC Order.[90] Matterhorn argues that because no competitor or customer has objected to Matterhorn's rates, the Commission erred by failing to explain why it is not entitled to an exception from the SFV methodology.[91]

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monopoly profits … capable of producing the intended effects on the firm's rivals such as driving them from the market;" and (3) "that there is a likelihood that the predatory scheme alleged would cause a rise in prices above a competitive level that would be sufficient to compensate for the amounts expended on the predation." Rehearing Request at 28-29 (citing *S. Nat. Gas Co.*, 79 FERC ¶ 61,280, at 62,219 (1997) (citing *Brooke Grp. Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209 (1993) and *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447, 459 (1993))).

[85] Rehearing Request at 30.

[86] *Id.* at 25.

[87] *Id.* (citing *Alts. to Traditional Cost-of-Serv. Ratemaking for Nat. Gas Pipelines*, 74 FERC ¶ 61,076, *reh'g denied*, 75 FERC ¶ 61,024 (1996)).

[88] *Id.* (citing Order No. 781, 144 FERC ¶ 61,034 at PP 34, 59).

[89] Rehearing Request at 25 (citing 18 C.F.R. § 284.123(g)).

[90] *Id.* at 24 (citing SOC Order, 191 FERC ¶ 61,186 at P 10).

[91] *Id*.

2. Commission Determination

28. As an initial matter, we disagree with Matterhorn's argument that no precedent supports the application of the SFV methodology to NGPA pipelines. As detailed extensively above, the Commission has routinely applied the SFV methodology to non-exempt NGPA pipelines after the *ANR v. FERC* proceeding.[92] Moreover, we find that Matterhorn's assertion that the Commission has moved to further loosen its oversight of NGPA pipelines[93] is inaccurate – in Order No. 781, the Commission expressly stated that the proposed rules do not minimize the Commission's regulatory oversight.[94]

29. Next, on rehearing, Matterhorn argues that the Commission departed from precedent, which it asserts does not require an NGPA section 311 pipeline to set a minimum rate.[95] However, the precedent that Matterhorn cites – *Phenix Transmission* – predates both *ANR v. FERC* and Order No. 436 (wherein the minimum rate was established), and therefore we refute Matterhorn's arguments that we have departed from precedent or that our precedent does not require a pipeline to post a minimum rate. On the contrary, since *ANR v. FERC* and Order No. 436, our policy has been to require NGPA pipelines to develop a minimum rate if the pipeline wishes to implement a discount policy for shippers.[96] We also reiterate that section 284.10(c)(4)(ii) of the Commission's regulations applies to NGPA pipelines, particularly because the foundational principles established in the regulations equally apply to NGPA pipelines.[97]

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[92] *Supra* PP 14-20.

[93] Rehearing Request a 25.

[94] Order No. 781, 144 FERC ¶ 61,034 at n.18. As explained above, in Order No. 781, the Commission revised its regulations to streamline its processing of a rate filing. However, any action taken in Order No. 781, does not implicate our findings here, in which we assess whether Matterhorn's filing conforms with the Commission's substantive policy of requiring application of the SFV methodology to NGPA pipelines.

[95] Rehearing Request at 23 (citing *Phenix Transmission Co.*, 32 FERC ¶ 61,096 at 61,263).

[96] *See, e.g., supra* note 62.

[97] SOC Order, 191 FERC ¶ 61,186 at P 15 & n.45. Although Matterhorn argues on rehearing that *Bay Gas*, 131 FERC ¶ 61,034 at P 36, where the Commission explained that pipelines may not provide discounts below variable costs, as reflected in the minimum rate, is not instructive because it relies on NGA regulations and precedent related to NGA pipelines, Rehearing Request at 24 n.94, we find that the opposite is true. The fact that the Commission in *Bay Gas* readily applied NGA precedent to an NGPA

30. Matterhorn attempts to acquire a novel exemption from the requirement to establish a minimum rate on the basis that it is unable to employ predatory pricing.[98] As discussed above, predatory pricing occurs when a firm is able to temporarily set an extremely low rate (i.e., even lower than the cost of service) such that it is able to drive out competitors from the market, which would then allow the firm to raise prices and recoup its initial losses, establishing a dominant or monopolistic position in the market.[99] Order No. 436 established the minimum rate partly as a method to inhibit this practice.[100] On rehearing, Matterhorn claims that it could not engage in predatory pricing and cites criteria the Commission has previously used to assess whether a pipeline has engaged in predatory pricing;[101] yet, that is not the question before us. Instead, here, Matterhorn seeks an *exemption* from the Commission's policy of requiring pipelines to post a minimum rate. Moreover, even if the Commission were to consider Matterhorn's request for an exemption to the minimum rate requirement, we do not find that Matterhorn's mere assertions that it lacks market power adequately supports an economic determination that Matterhorn lacks market power in the markets it serves.[102]

31. We acknowledge that Order No. 636 largely exempted intrastate pipelines from the Commission's requirements.[103] However, after *ANR v. FERC*, the Commission found

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pipeline belies Matterhorn's argument that the SOC Order was an outlier. As noted above, the concepts underlying the SFV methodology were developed in Order Nos. 436 and 636 and were carried over to NGPA pipelines following the *ANR v. FERC* proceeding.

[98] Rehearing Request at 27-30.

[99] *Infra* P 16 (citing *Barry Wright Corp. v. ITT Grinnell Corp.*, 724 F.2d 227, 231 (1st Cir. 1983)).

[100] Order No. 436, FERC Stats. & Regs. ¶ 31,542.

[101] Rehearing Request at 28 (citing *S. Nat. Gas Co.*, 79 FERC ¶ 61,280 at 62,219 (1997) (citing *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209 (1993) and *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447, 459 (1993))).

[102] *Id.* at 27-30.

[103] Order No. 636, FERC Stats. & Regs. ¶ 30,939 at 30,407 n.89. ("All future references to pipelines are to interstate pipelines. Except for expanding the Part 284 definition of transportation to include storage, the regulations adopted by this order do not apply to intrastate pipelines."). In contrast, transportation services offered by intrastate pipeline under NGPA section 311 are subject to open-access and non-discriminatory access standards as interstate pipelines are under Order Nos. 436 and 636.

that, "as the court held in *ANR Pipeline Co. v. FERC*, some of the policies adopted for interstate pipelines may be equally applicable to intrastate pipelines, and the Commission must consider these policies in determining whether to apply any of the Order No. 636 requirements to specific intrastate pipelines."[104] Because NGA and NGPA pipelines compete in interstate commerce, and because SFV promotes transparency and competition, we continue to find that the Commission's policy requiring use of the SFV methodology for interstate pipelines also applies to intrastate pipelines that provide NGPA section 311 service.

32. On rehearing, Matterhorn claims that it is entitled to an exception to the SFV methodology because it has no competitors or customers that objected to its rate proposal.[105] But, to avail itself of this exception, *two* criteria must be met: the pipeline must have no objecting customers *and* the applicant must operate in an area where interstate competitors can charge rates based on rate designs other than SFV – a criterion that Matterhorn has not addressed here.[106] Matterhorn does not suggest or support a position that any other of the Commission's traditional rate design exceptions to the SFV methodology applies to it. Given that NGA pipelines are subject to SFV rates, it follows that for shippers to be able to compare prices for the same movements between locations, the SFV methodology must be equally applied to both NGA and NGPA pipelines. Thus, applying the SFV methodology to Matterhorn did not "blur" the lines between NGA and NGPA pipelines, as Matterhorn alleges,[107] but rather, reflects that the foundational underpinnings of our policies for each type of pipeline are the same.[108]

Alts. to Traditional Cost-of-Serv. Ratemaking for Nat. Gas Pipelines, 74 FERC ¶ 61,076 at 61,232.

[104] *GulfTerra Tex. Pipeline, L.P.*, 106 FERC ¶ 61,184, at P 13 (2004) (citing *ANR Pipeline v. FERC*, 71 F.3d at 902), *granting reconsideration on other grounds, Enterprise Tex. Pipeline L.P.,* 117 FERC ¶ 61,025 (2006).

[105] Rehearing Request at 24.

[106] SOC Order, 191 FERC ¶ 61,186 at P 10 (emphasis added) (citing *EPGT Tex. Pipeline, L.P.*, 99 FERC at 62,251-52 (arguing that while operating in an area where interstate pipeline competitors can charge non-SFV rates, EPGT would be unable to attract firm customers unless it is also allowed non-SFV rates)).

[107] Rehearing Request at 2 (asserting that the Commission's reasoning "blurs the lines between the Commission's NGA and NGPA regulatory oversight").

[108] *See, e.g.*, *ANR v. FERC*, 71 F.3d at 904 (finding that the Commission's approval of MichCon's use of blended rates failed to control the Commission's determination of the anti-competitive nature of blended rates in interstate transportation

Accordingly, we find that the Commission did not err in requiring Matterhorn to revise its rates to incorporate the SFV methodology, consistent with the Commission's policy.

B. The NGPA Framework and Commission Regulations

1. Rehearing Request

33. Matterhorn argues that the SOC Order departs from the structure set forth in the NGPA and the Commission's regulations in processing its proposed rate.[109] Matterhorn explains that there are two methods by which an intrastate pipeline providing NGPA section 311 service may make a rate election with the Commission.[110] First, Matterhorn states that pursuant to Section (b)(1), an intrastate pipeline may elect to use a state-approved rate as the basis for its Commission rates (Section (b)(1) Rates). Alternatively, under Section (b)(2), a pipeline may elect to support its rates by providing information showing the rates and charges are fair and equitable (Section (b)(2) Rates).[111]

34. For Section (b)(1) Rates, Matterhorn argues that such rate elections are presumed to be "fair and equitable" and "not in excess of the rates and charges which interstate pipelines would be permitted to charge for providing similar transportation service"[112] provided they are "contained in one of [the intrastate pipeline's] then effective transportation rate schedules for intrastate service on file with the appropriate state regulatory agency which the intrastate pipeline determines covers service comparable to service under this subpart."[113] Matterhorn argues that the Commission "does not look behind the state regulatory agency's cost and revenue findings to determine whether they are reasonably supported."[114] Rather, Matterhorn claims that the Commission "defers to the cost and revenue factual findings of the state regulatory agency."[115] Matterhorn

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service).

[109] Rehearing Request at 9-10, 14-25, 34-35.

[110] *Id.* at 14.

[111] *Id.* at 14-16 (citing 18 C.F.R. § 284.123(b)(2)(i)).

[112] *Id.* at 14-15.

[113] *Id.* (citing 18 C.F.R. §§ 284.123(b)(1)(ii) & (d); *N. Ind. Pub. Serv. Co.*, 184 FERC ¶ 61,032 (2023) (*Northern Indiana*)).

[114] *Id.* at 15 (quoting Order No. 781, 144 FERC ¶ 61,034 at P 58).

[115] *Id.* (quoting Order No. 781, 144 FERC ¶ 61,034 at P 58).

claims that if Section (b)(1) Rates are not protested, the Commission's regulations provide no process for any substantive review of the rate, and that non-protested NGPA section 311 rates are rarely the subject of a Commission order.[116] Matterhorn contends that the lack of process for rates set pursuant to Section (b)(1) makes sense, given that it would otherwise be duplicative of the state rate setting process.[117]

35. Matterhorn argues that for Section (b)(2) Rates, intrastate pipelines must apply directly to the Commission for rate approval for each service conducted, provide information showing such rates and charges are fair and equitable, and pay an accompanying filing fee.[118] Matterhorn states that Section (b)(2) Rates are not presumed to be fair and equitable, although the intrastate pipeline is able to charge the rate upon filing, subject to refund.[119] However, Matterhorn states that there are clear procedures that must be followed while the rate is pending review. First, the Commission's review of Section (b)(2) Rates must be completed within 150 days.[120] Matterhorn also states that during this time frame, the Commission must announce whether it intends to institute a formal hearing.[121] Matterhorn contends that, if no action is taken by the Commission within 150 days, the proposed Section (b)(2) Rates are "deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for providing similar transportation service."[122] Matterhorn states that if the Commission requires further proceedings, interested parties would be permitted an opportunity for written comments and an oral presentation of views, data, and arguments.[123]

36. Matterhorn states that Sections (b)(1) and (b)(2) have been modified since their inception to incorporate certain principles applicable to NGA pipelines.[124] However,

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[116] *Id.* at 15-16 (citing 18 C.F.R. § 284.123(g) (providing a process for pipelines that elect the optional notice procedures under subpart (g) to consider and review protests)).

[117] *Id.*

[118] *Id.* at 16.

[119] *Id.*

[120] *Id.*

[121] *Id.*

[122] *Id.* at 16 (quoting 18 C.F.R. § 284.123(b)(2)(ii)).

[123] *Id.* (citing 18 C.F.R. § 284.123(b)(2)(ii)).

[124] *Id.* at 17 (citing Order No. 436, FERC Stats. & Regs. ¶ 30,469-70, (revising

Matterhorn states that in making these modifications, the Commission did not revise the NGPA rules to require use of the SFV methodology or to codify the SFV methodology as it applies to NGPA pipelines following the D.C. Circuit's decision in *ANR v. FERC*.[125] Matterhorn argues that any changes to NGPA regulations were intended to reduce the burden associated with section 311 service, and did not reference rate design requirements.[126]

37. Matterhorn contends that in the SOC Order, the Commission adopted a regulatory framework that departed from the Commission's published regulations.[127] Matterhorn argues that once the Commission found that Matterhorn's NGPA section 311 rates should be presumed to be fair and equitable, no further inquiry was permitted.[128] Instead, Matterhorn argues that the Commission erred in finding that it was permitted to "reconsider the proposed [Section (b)(1)] rates and the presumption granted to such rates, and disapprove a Section (b)(1) rate under Section (b)(2)(iii)." Matterhorn contends that the Commission interpreted its authority under Section (b)(1) based on mechanisms only available under Section (b)(2).[129] Matterhorn argues that the Commission's regulations do not permit an agency to pick and choose which subparts to apply, and it is the pipeline's choice whether to elect rates pursuant to Section (b)(1) or Section (b)(2).[130] In fact, Matterhorn argues that, in a different context, the Commission has prohibited an intrastate pipeline from using the Section (b)(1) rate election when the rate design differed from the one used by the state agency.[131] In that proceeding,

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the Section (b)(1) regulations to incorporate by reference NGA regulations governing firm and interruptible transportation now found at 18 C.F.R. §§ 284.7 and 284.9); Order No. 636, FERC Stats. & Regs. 30,939, *reh'g granted in part & denied in part & clarified*, Order No. 636–A, FERC Stats. & Regs. ¶ 30,950 at 30,521, *reh'g denied*, Order No. 636-A, 60 FERC ¶ 61,102, *order on reh'g & clarification*, Order No. 636-B, 61 FERC ¶ 61,272 (expanding the open access program), *reh'g denied*, Order No. 636-C, 62 FERC at 61,014).

[125] 71 F.3d at 902.

[126] Rehearing Request at 17-18 (citing Order No. 781, 144 FERC ¶ 61,034 at P 1).

[127] *Id.* at 18.

[128] *Id*.

[129] *Id.* at 19 (citing *Northern Indiana*, 184 FERC ¶ 61,032).

[130] *Id.*

[131] *Id.* (citing *Enbridge Pipelines (N. Tex.) L.P.*, 149 FERC ¶ 61,215, at P 5 (2014)

Matterhorn contends that the Commission found that the intrastate pipeline did not elect to use a rate on file with the appropriate state regulatory agency because it had replaced the rate approved by the RRCT with "a new rate using a completely different rate design methodology."[132]

38. Matterhorn maintains that if it had set its rates pursuant to Section (b)(2), it would have been afforded due process before it was directed to change its rates, because the Commission would have had to make its decision within 150 days or provide Matterhorn with notice that additional time was required.[133] Matterhorn states that the Commission in this instance waited 214 days to issue the SOC Order, and Matterhorn continued to make commercial decisions that relied on the rates it filed with the Commission in October 2024.[134] Moreover, Matterhorn contends that if it had filed its rates under Section (b)(2), it would have had the opportunity to represent its views in the form of "written comments" and "oral presentations of views, data and arguments" before the Commission rejected its rate.[135] Matterhorn argues that the SOC Order "offers no semblance of this or a similar process that would provide a forum for the exercise of rights."[136] Matterhorn states that it elected rates under Section (b)(1) instead of Section (b)(2) because it believed the rates were non-controversial and did not presume the rates would be rejected.[137]

39. Matterhorn argues that the Commission departed from its precedent, under which it "endeavors to issue orders on [Section](b)(1)] filings within 150 days as well, rather than allowing them to take effect by inaction."[138] Matterhorn alleges that under the

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(quoting *Enbridge Pipelines (N. Tex.) L.P.*, 139 FERC ¶ 61,216, at P 10 (2012))).

[132] *Id.* (citing Enbridge *Pipelines (N. Tex.) L.P.*, 149 FERC ¶ 61,215 at P 5 (quoting *Enbridge Pipelines (N. Tex.) L.P.*, 139 FERC ¶ 61,216 at P 10)).

[133] *Id.* (citing 18 C.F.R. § 284.123(b)(2)(ii)).

[134] *Id.* at 19-20.

[135] *Id.* at 20 (citing 18 C.F.R. § 284.123(b)(2)(ii)).

[136] *Id*.

[137] *Id.*

[138] *Id.* at 19-20 (citing *Enbridge Pipelines (N. Tex.) L.P.*, 139 FERC ¶ 61,216 at P 3 & n.5 (noting that the regulations only impose a 150-day deadline on petitions made under Section (b)(2)); *Enbridge Pipelines (N. Tex.)* L.P., 129 FERC ¶ 61,074, at P 5 (2009)).

optional notice procedures in section 284.123(g) of the Commission's regulations, an unprotested rate is automatically deemed to be fair and equitable at the close of a 60-day notice period, regardless of whether the SFV rate design is used.[139]

40. Matterhorn argues that the SOC Order placed it in the "worst of both worlds" because it relied on setting its rates pursuant to Section (b)(1), but was stripped of the presumptions afforded to state-reviewed rates, while also being denied the procedural safeguards under Section (b)(2).[140] Matterhorn contests the Commission's directive in the SOC Order to refile its rates based upon data that it compiled for the state process, which does not mandate SFV rates, simply for the Commission to make a rate determination based upon SFV rates is not grounded in the Commission's regulations, Matterhorn's course of performance, or precedent.[141] Matterhorn argues that this is an unpublished remedy that solves a problem that does not exist.[142]

41. Matterhorn concedes that the Commission has a role in reviewing rates filed pursuant to Section (b)(1), but asserts that this role is narrow, and limited to determining whether: (1) the Commission-jurisdictional rate is based on rates reviewed and approved by the applicable state regulatory agency; (2) the state-approved rate is for service comparable to the proposed Commission-jurisdictional service; and (3) the state agency is the appropriate regulatory authority to review those rates.[143] Matterhorn argues that the Commission has determined that Matterhorn satisfied all three prongs.[144]

42. Matterhorn contends that the Commission does not have the ability to override its own regulatory framework and cannot invoke a broader mandate to revisit settled

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[139] *Id.* at 20 (citing 18 C.F.R. § 284.123(g)).

[140] *Id.* at 20-21.

[141] *Id.* at 21 (citing *Enbridge Pipelines (N. Tex.) L.P.*, 139 FERC ¶ 61,216 at P 13).

[142] *Id.*

[143] *Id.*

[144] *Id.* at 21-22 (citing SOC Order, 191 FERC ¶ 61,186 at P 7 (confirming that Matterhorn's proposed initial rates "should receive the rebuttable presumption consistent with section 284.123(b)(1)(ii) as: (1) Matterhorn's proposed section 311 rates are based upon its RRCT rates; (2) the state-approved rates were for service 'comparable' to the proposed Commission-jurisdictional service; and (3) the RRCT was the 'appropriate state regulatory agency' to review those particular rates.")).

presumptions without a proper rulemaking or reasonable explanation.[145] Matterhorn states that if the Commission intended to depart from its published regulations and establish a new policy, it did so without a rational basis.[146]

43. Matterhorn further contends that the SOC Order contravenes the broader goals of the NGPA.[147] Matterhorn states that section 311 of the NGPA was specifically designed to supplement the supply of gas to the interstate market.[148] Accordingly, Matterhorn states that in developing section 311, the Commission acknowledged that in furtherance of this national policy, the Commission permitted intrastate pipelines to base their interstate rates on cost-based rates approved by the applicable state regulatory authority.[149] Matterhorn contends that in Order No. 781, the Commission stated that it would "[defer] to the cost and revenue determinations of state regulatory agencies to allow the state regulatory agencies to determine when rates need to be updated to reflect changes in costs and revenues."[150] Matterhorn argues that the actions taken in the SOC Order undermine the framework of the NGPA and undermine the RRCT's judgment.[151]

2. Commission Determination

44. In this proceeding, Matterhorn proposed, pursuant to section 284.123(b)(1)(ii) of the Commission's regulations, to base its NGPA section 311 rates on comparable rates contained in one of its then-effective transportation rate schedules for intrastate service on file with an appropriate state regulatory agency, the RRCT. On rehearing, Matterhorn claims that, since its proposed rates were already approved by the RRCT, pursuant to Section (b)(1), the Commission's inquiry into Matterhorn's rates should end there.[152] We do not dispute, as Matterhorn argues, that such state-approved rates are entitled under the Commission's regulations to the presumption that the rates are fair and equitable.[153] But

[145] *Id.* at 22.

[146] *Id.*

[147] *Id.* at 34.

[148] *Id.*

[149] *Id.* (citing Order No. 781, 144 FERC ¶ 61,034 at PP 34, 59).

[150] *Id.* at 34 (citing Order No. 781, 144 FERC ¶ 61,034 at P 58).

[151] *Id.* at 35.

[152] Rehearing Request at 18.

[153] *See* 18 C.F.R. 284.123(d)(1) ("If the intrastate pipeline is charging a rate

a "presumption" is, by definition, not a conclusion.[154] That presumption, as illustrated in *ANR v. FERC*, is rebuttable if a "reasonable justification" cannot be provided for exclusion from SFV requirements.[155] Here, Matterhorn proposed a $0.000 minimum rate[156] despite having variable costs, and a $0.89 per MMBtu one-part *volumetric* firm rate to recover both its fixed and variable costs, which is inconsistent with the SFV methodology. As discussed above, a blended rate obscures the transportation costs from the commodity costs (variable costs) and is therefore inconsistent with Commission policy. The Commission has found that for cost-based rates, failure to use the SFV methodology results in rates that are not "fair and equitable."[157] Consequently, although Matterhorn's proposed rates qualified for the rebuttable presumption that the rates are fair and equitable, that presumption was rebutted, and the burden of proof shifted back to Matterhorn to support its proposed rates.

45. Matterhorn contends that because the Commission's regulations do not provide a defined process for addressing section (b)(1) rates where the presumption has been rebutted, the Commission's role must conclude at that point. However, the Commission cannot disregard a proposed rate that does not conform to the Commission's policies. In other words, while the Commission did not look behind the RRCT's cost and revenue findings in support of the rate, it cannot turn a blind eye to Matterhorn's use of a one-part volumetric firm rate to recover both its fixed and variable costs and its use of a $0.000 minimum rate, which render the rates not "fair and equitable."[158] This is precisely the

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computed pursuant to § 284.123(b)(1), the rate charged is presumed to be: (1) Fair and equitable.").

[154] "[A] presumption of a deed is one that may be rebutted by proof of facts inconsistent with its supposed existence." *Fletcher v. Fuller*, 120 U.S. 534, 550 (1887).

[155] 71 F.3d at 902.

[156] *See* Matterhorn Express Pipeline, LLC, Tariffs, Statement of Operating Conditions (0.0.0).

[157] SOC Order, 191 FERC ¶ 61,186 at P 6 n.17 (citing *ANR v. FERC*, 71 F.3d 897, at 902; *Indep. Pipeline Co.*, 89 FERC ¶ 61,283, at 61,847 (requiring "basis that would justify the Commission's departure from using the SFV rate design methodology."). *See Mustang v. FERC*, 859 F.2d 1447, 1452–57 (defining "fair and equitable").

[158] In other words, a facial review of Matterhorn's filing made it clear that it was no longer eligible for the rebuttable presumption. Accordingly, we do not find Matterhorn's arguments persuasive that the Commission has previously stated that our review is limited to a three-prong test. *See* Rehearing Request at 15 (citing *Northern Indiana*, 184 FERC ¶ 61,032 at P 8). The test as outlined in *Northern Indiana* was stated as a method to discern whether the filing at issue is eligible to recover a rate pursuant to

approach the D.C. Circuit took in *ANR v. FERC*, where the D.C. Circuit found that the Commission could not accept MichCon's proposed rates on the basis that they were approved by the state regulatory agency in the face of the Commission's determination of the anti-competitive nature of blended rates in interstate transportation service.[159] Thus, we continue to find that "if evidence exists that rebuts the presumption granted under section 284.123(b)(1) that the rates are fair and equitable, the Commission may issue an order to reconsider the proposed rates and the presumption granted to such rates."[160] Nor are we persuaded by Matterhorn's assertions that "the Commission has never ordered an intrastate pipeline [with unprotested Section (b)(1) Rates] to adopt SFV rates."[161] Simply because a filing was not protested does not obviate the Commission's independent requirement to ensure that the rates are fair and equitable.

46. We continue to find that Matterhorn's other arguments on rehearing regarding the process afforded to its filing under our regulations are not persuasive. First, we are not persuaded by Matterhorn's claims that, had it known that the Commission would not accept its Section (b)(1) rate, it would have instead elected to submit its filing under Section (b)(2).[162] The fact that Matterhorn is dissatisfied with the Commission's ultimate determination is not grounds for relief.[163] Indeed, it is incumbent upon the applicant to select the appropriate framework upon which to support its rates.[164] Even if Matterhorn filed its rates pursuant to Section (b)(2), as the Commission found in Order No. 781, not

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Section (b)(1), but it does not erase our independent statutory obligation to determine whether the rate is fair and equitable.

[159] *See ANR v. FERC*, 71 F.3d at 902 (wherein the D.C. Circuit found that the Section (b)(1) rates could be rebutted on the basis that they did not rely upon the SFV methodology).

[160] SOC Order, 191 FERC ¶ 61,186 at P 8. *See also* 18 C.F.R. § 284.123(d)(1) (granting a presumption for certain (b)(1) filings). *ANR v. FERC*, 71 F.3d at 903 ("If the presumption were not rebuttable and FERC declined to scrutinize rate elections to determine whether the rates were 'fair and equitable,' FERC would be shirking its statutory duty under § 311 of the NGPA.").

[161] Rehearing Request at 10.

[162] *Id.* at 20.

[163] We note, however, that Matterhorn is not precluded from filing a new rate using the Section (b)(2) election.

[164] Rehearing Request at 19 ("It is the pipeline's choice whether to elect rates under Section (b)(1) or Section (b)(2)").

all NGPA section 311 filings necessitate an additional proceeding pursuant to 18 C.F.R. § 284.123(b)(2)(ii).[165] Given that the Commission only took issue with Matterhorn's rate design, specifically its failure to use the SFV methodology to design its rates, and not a disputed issue of material fact, we continue to find that those procedures, which would afford Matterhorn the opportunity to support its filing with oral arguments and data, was unnecessary to process its filing as the Commission was able to reach its decision based on the written record.[166] We further find that Matterhorn's arguments that under the optional notice procedures pursuant to section 284.123(g) of the Commission's regulations, an unprotested rate is automatically deemed to be fair and equitable at the close of a 60 day period, is not relevant, as Matterhorn acknowledges that it did not elect the optional notice procedures in this proceeding.[167]

47. Moreover, we disagree with Matterhorn's argument that it was denied due process.[168] Due process requires the "opportunity to be heard at a meaningful time and in a meaningful manner."[169] Matterhorn's arguments that the Commission did not process its filing in a specific manner in no way adversely affected Matterhorn's rights: Matterhorn was able to raise its concerns in its rate filing and again on rehearing.[170]

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[165] Order No. 781, 144 FERC ¶ 61,034 at P 44 ("the Commission believes that use of these procedures may not be the most appropriate procedure to resolve every case. In some cases, it may be possible to resolve contested issues based solely on written pleadings without the need for any oral presentation of views, data, and argument as permitted under staff panel proceedings.").

[166] Nor does Matterhorn identify the nature of the arguments or data it would have submitted in support of its filing in the context of the staff panel proceeding.

[167] Rehearing Request at 20 ("Matterhorn made the conscious choice not to use the Commission's optional notice procedures provided in section 284.123(g)").

[168] *Id.* at 19.

[169] *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)); *see Myersville Citizens for a Rural Cmty. v. FERC*, 783 F.3d 1301, 1327 (D.C. Cir. 2015) (citing *BNSF Ry. Co. v. Surface Transp. Bd.,* 453 F.3d 473, 486 (D.C. Cir. 2006)).

[170] *See, e.g.*, *State of Cal. ex rel. Lockyer v. FERC*, 329 F.3d 700, 711 (9th Cir. 2003) ("Even assuming *arguendo* that the Commission initially deprived the petitioners of an opportunity for a hearing by approving the NEG applications after only a few days of public comment, the petitioners still would have no legal basis for complaint. In this case, the Commission provided all the procedural protections required . . . when it carefully considered all the evidence and arguments that the petitioners offered in their petitions for rehearing and motions to intervene."); *see also ANR Pipeline Co.*, 143 FERC

Thus, the absence of a specifically enumerated process had no substantive effect on Matterhorn's ability to argue its case.[171] As Matterhorn acknowledges, the Commission's role is not "to accept all section (b)(1) filings at face value," nor is it limited to a "merely ministerial" role.[172] Yet, this is precisely what Matterhorn seeks on rehearing – a rubberstamp of its filing despite its failure to conform its filing to longstanding Commission policy.[173] Given that the Commission's regulations do not prescribe a specific process when NGPA section 311 pipelines submit state-reviewed rates that do not comply with Commission policies, and the Commission's procedural discretion, Matterhorn could not have reasonably presumed the Commission would adopt any particular process.

48. Furthermore, the Commission precedent to which Matterhorn cites does not demonstrate, as Matterhorn alleges, that the Commission has taken contrary positions regarding the characterization of Section (b)(1) rate filings.[174] In *Enbridge Pipelines (North Texas) L.P.*[175] the applicant, Enbridge Pipelines (North Texas) L.P. (EPNT) proposed to change its NGPA section 311 rate with the Commission by proposing a state rate that was not reviewed or approved by a state regulatory agency.[176] The Commission stated that EPNT must either request the RRCT to review its rates expeditiously such that its proposal before the Commission would become a Section (b)(1) rate election, or instead alter its rate election to reflect that it was proposing a Section (b)(2) rate.[177] On compliance, EPNT adopted neither option, but instead modified its proposed NGPA section 311 rate employing a methodology already approved by the RRCT for its then effective city-gate rates. The Commission accepted EPNT's proposal pursuant to section

¶ 61,225, at PP 57, 60 (2013).

[171] *See, e.g., Minisink Residents for Env't Pres. & Safety v. FERC,* 762 F.3d 97, 115 (D.C. Cir. 2014); *Blumenthal v. FERC,* 613 F.3d 1142, 1145-1146 (D.C. Cir. 2010).

[172] Rehearing Request at 21.

[173] *Id.* at 33.

[174] *Id.* at 19.

[175] 149 FERC ¶ 61,215.

[176] *Id.* at P 6.

[177] *Enbridge Pipelines (N. Tex.) L.P.*, 149 FERC ¶ 61,215 at P 6 (citing *Enbridge Pipelines (N. Tex.) L.P.*, 139 FERC ¶ 61,216 at P 14).

284.123(b)(1)(i)(A).[178] Thus, the Commission in the SOC Order did not deviate from precedent, as Matterhorn argues,[179] but instead, similar to *Enbridge Pipelines (North Texas) L.P*, the Commission stated it would accept a minor deviation from the rate approved by the state authority as a section (b)(1) rate.[180] As illustrated by the Appendix in the SOC Order, the Commission would accept Matterhorn's proposed initial rate as a section (b)(1) state approved rate, if Matterhorn slightly modified the workpapers it submitted to the RRCT to develop the rate by using the SFV methodology.[181]

49. Matterhorn argues on rehearing that in the SOC Order the Commission impermissibly requested that Matterhorn refile its Section (b)(1) rates, which were created for the RRCT, a state authority, for the Commission's review.[182] However, the Commission can only accept rates that are consistent with its policies and regulations. Given that Matterhorn's proposed rates were insufficiently justified, the Commission offered an illustrative and non-binding example in the Appendix to the SOC Order to demonstrate to Matterhorn how it can bring its rates into conformance with Commission policy by using its RRCT approved cost and revenue data within the parameters set forth in the SFV methodology. Further, the fact that the Commission approved rate will differ from the state approved rate does not negate the work undertaken by the RRCT as alleged by Matterhorn;[183] the RRCT's approval of Matterhorn's rates, which govern movements of natural gas under their purview remains applicable.

C. SFV Methodology Applied to Other NGPA Section 311 Pipelines

1. Rehearing Request

50. Matterhorn contends that the Commission's disparate treatment of Matterhorn is unduly discriminatory.[184] Matterhorn claims that it is similarly situated to other pipelines

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[178] *Enbridge Pipelines (N. Tex.) L.P.*, 149 FERC ¶ 61,215 at PP 8-9.

[179] Rehearing Request at 19.

[180] *See* SOC Order, 191 FERC ¶ 61,186 at PP 1, 6, 16.

[181] *Id.* PP 16, app. ("Matterhorn must file the revised initial rates using the Commission's SFV methodology based on the supporting evidence on file with the RRCT.").

[182] Rehearing Request at 21.

[183] *Id.* at 13, 35.

[184] *Id.* at 2, 9, 26-27.

that have elected unprotested, state-approved rates under Section (b)(1) without adopting the SFV rate design, and that the Commission erred in rejecting Matterhorn's rates and applying a retroactive condition.[185] Matterhorn contends that the Commission has regularly permitted intrastate pipelines to enter into NGPA section 311 service with non-SFV rates,[186] and that none of the precedent cited in the SOC Order supports a blanket application of the Commission's SFV rate policy to uncontested Section (b)(1) rates.[187]

51. Matterhorn similarly objects to the Commission's rejection of its initial rates on the basis that it has a $0.000 minimum rate.[188] Matterhorn claims that there are many NGPA section 311 pipelines with rates on file with the Commission that have a minimum reservation or demand rate of $0.000, or have no minimum rate stated at all.[189] Thus, Matterhorn contends that the $0.000 minimum rate is "not an aberration but a feature" of many section 311 SOCs, including pipelines that elected rates under Section (b)(2).[190]

52. Matterhorn claims that the Commission has treated Matterhorn differently from other section 311 pipelines that have been permitted to charge $0.000 minimum rates.[191] Matterhorn alleges that many of these rates are also unprotested and filed under Section (b)(1) as state-approved rates, and do not adopt the SFV rate design.[192] Matterhorn claims that the Commission cannot distinguish Matterhorn from such pipelines on the basis that the other section 311 pipelines with $0.000 minimum rates do not have variable

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[185] *Id.* at 26-27.

[186] *Id.* at 24 (asserting that the Commission has consistently exempted intrastate pipelines providing section 311 service from SFV rate design requirements).

[187] *Id.* at 1-2, 24 (Matterhorn contends that this includes uncontested minimum rates).

[188] *Id.* at 26 (citing SOC Order, 191 FERC ¶ 61,186 at P 13 (citing *MichCon Remand Order*, 85 FERC ¶ 61,080 at 61,283-84; *ANR Pipeline Co.*, 126 FERC ¶ 61,203, at 62,154-55 (2009)).

[189] *Id.* at 26 & n.109 (citing the SOCs for several pipelines). Matterhorn also cites SOCs for four NGPA section 311 pipelines that it states did not include a minimum rate. *Id.*

[190] *Id.* at 26.

[191] *Id.*

[192] *Id.* at 26-27.

costs because many of those pipelines are complex, hundreds of miles in length, and service multiple shippers.[193]

53. Matterhorn contends that the directives of the SOC Order are contrary to the NGPA's goal of reducing regulatory barriers, bad public policy, and undermine the regulatory framework of the RRCT by nullifying their process.[194] Matterhorn also states that compliance with the SOC Order will reduce its future revenues and will confuse shippers as to the hierarchy of applicable transportation rates.[195]

2. Commission Determination

54. We continue to be unpersuaded by Matterhorn's arguments. First, Matterhorn argues that there are many "intrastate pipelines with published Section 311 SOCs on file with FERC that state a minimum reservation or demand rate of $0.000."[196] This appears to be a misunderstanding of the mechanisms of SFV and minimum rates. As explained above, the concept of setting a minimum and maximum rate was established in Order No. 436 (which predates the Commission's adoption of the SFV methodology)[197] and is intended to promote competition by providing a range that pipelines may discount rates within. In Order No. 436, the Commission explained that a pipeline cannot discount rates below its variable costs.[198] At that time, blended rates were permitted. With the adoption of the SFV methodology in Order No. 636, the Commission required that pipelines separate the recovery of fixed and variable costs in rates. Because all fixed costs were directed to be removed from the usage rate component, and only variable costs are permitted in the usage component of a rate, the usage charge cannot be discounted

[193] *Id.* at 27.

[194] *Id.* at 13.

[195] *Id.* at 32.

[196] *Id.* at 26.

[197] *See* Order No. 436, FERC Stats. & Regs. ¶ 30,665 ("[p]ipeline rates for self-implementing transportation must be volumetric and downwardly flexible between a maximum and a minimum … In order for pipelines to respond flexibly to market conditions between rate cases, rates below the maximum may be charged as long as they are not unduly discriminatory and are filed at the Commission. Such "rate discounting" must be solely at the pipeline's risk of under-recovery of costs; no pipeline is permitted to seek to recover such costs retroactively in future rate cases.").

[198] Order No. 436, FERC Stats. & Regs. ¶ 30,665.

because the usage charge should reflect the shipper's *actual usage costs*.[199] Accordingly, any discounting should be reflected only in the demand component of a rate. Therefore, a pipeline's maximum *demand* charge should reflect its total fixed costs, but its minimum *demand* charge can be zero.[200] As such, Matterhorn's argument that there are other pipelines with a minimum *demand* charge of zero merely demonstrates that these pipelines are properly applying SFV concepts. In fact, the Commission suggested in the Appendix to the SOC Order that Matterhorn also file a $0.000 minimum demand charge.

55. With respect to Matterhorn's assertion that the SFV methodology has not been enforced in other proceedings,[201] we acknowledge that the SOCs cited by Matterhorn do not explicitly reflect whether an exception to the SFV methodology applied and, accordingly, the Commission's precedent on this issue could be viewed as not entirely consistent. Although the Commission has attempted to ensure consistent application of the SFV methodology, at times, it has mistakenly accepted rates that depart from SFV or which include a minimum usage rate of $0.000 without explaining why such filings were exempted.[202] In the interest of certainty, and consistent with Commission policy, regulations, and precedent, we confirm that all section 311 pipelines electing a rate pursuant to section 284.123 must adhere to the SFV methodology to formulate their

[199] *See infra* note. 40. In addition, the usage component of a maximum rate should also correspond with the actual usage of the shipper, and thus cannot reflect a zero charge.

[200] Because there are no variable costs in the demand charge under the SFV methodology, the minimum demand charge should reflect an average variable cost of zero.

[201] Rehearing Request at 26 (citing proceedings in which Matterhorn contends that the Commission has permitted a $0.000 or no minimum rate to be posted).

[202] *See PJM Interconnection, LLC*, 153 FERC ¶ 61,308, at P 13 (2015) ("[S]ilence is not evidence of Commission policy. As the courts have held, FERC's acceptance of a pipeline's tariff sheets does not turn every provision of the tariff into policy or precedent, especially when the Commission later takes the opportunity to clarify its policy." (citing *Webster v. Fall*, 266 U.S. 507, 510 (1925) (finding that "[q]uestions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as have been so decided as to constitute precedent."))); *see also Duke Energy Progress, LLC v. FERC*, 106 F.4th 1145, 1156 (D.C. Cir. 2024) (affirming Commission orders that acknowledged past inconsistency but explained that some prior orders were inconsistent with regulations).

rates[203] unless the rate proposal falls under one of the exceptions enumerated above,[204] or is otherwise expressly exempted.

56. We further disagree with respect to Matterhorn's arguments that by not permitting the state-approved RRCT rate as its NGPA section 311 rate, the Commission's findings will "sow [ ] confusion" among shippers and introduce confusion as to the "hierarchy of applicable transportation rates."[205] There is no rate hierarchy. The critical factor of whether a shipper should be charged the NGPA section 311 rate (as opposed to the RRCT rate) is whether the natural gas will move interstate (i.e., if the transportation ends by delivery to an interstate pipeline).[206] In contrast, if the natural gas does not move interstate, that movement is governed by the rate on file with the relevant state authority. Thus, the RRCT's authority is not negated by the Commission's requirement for section 311 pipelines to use the SFV methodology. The RRCT's review and approval of rates remains effective as to the rates under its purview (intrastate); similarly, the rate approved by the Commission will conform with Commission policies and precedent and govern movements pursuant to section 311 of the NGPA (interstate). Thus, Matterhorn's intrastate customers will only pay the intrastate rates approved by and filed with the RRCT, and NGPA section 311 customers will only pay the Commission-approved rates in the SOC. While Matterhorn represents that the ability to offer flexible interstate and intrastate services "is a key element of [its] commercial offerings," we are not persuaded that requiring Matterhorn to comply with the Commission's requirements for this important service imposes an unreasonable burden.[207]

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[203] Although the Commission has at times, without explanation, permitted section 311 pipelines that do not qualify under the exceptions to charge rates with a $0.000 minimum rate or no posted minimum rate, the Commission has not expressly endorsed that approach. *Duke Energy Progress, LLC v. FERC*, 106 F.4th 1145, 1156 (D.C. Cir. 2024) ("Once an agency has acknowledged that some of its prior cases were wrongly decided, this Court's precedent does not require the agency to endlessly repeat its error for the sake of consistency.") (citing, e.g., *Chem-Haulers, Inc. v. ICC*, 565 F.2d 728, 730 (D.C. Cir. 1977) ("The mere fact that the [agency] may have nodded on one occasion does not entitle a litigant to a repetition of its blunder[.]").

[204] *Supra* P 21.

[205] Rehearing Request at 2, 32.

[206] *See* 15 U.S.C. § 3371(a)(2).

[207] Rehearing Request at 32.

D. Notice of SFV Policy and "Retroactive Application"

1. Rehearing Request

57. Matterhorn argues that the Commission erred in the SOC Order by announcing a new rule without proper notice when it directed Matterhorn to change its rates based upon a novel interpretation of its regulations that conflicts with its past actions.[208] Matterhorn further alleges that the Commission did not articulate its rationale why Matterhorn's rate was rejected, explain why other similarly situated pipelines' filings were treated differently, or discuss evidence of competitive harm.[209] Matterhorn states that no shippers or competitors have protested the rates or petitioned the Commission for relief.[210]

58. Matterhorn argues that the Commission failed to acknowledge its departure from precedent, and instead improperly characterized its directive as an application of "longstanding Commission policy."[211]

59. Based on this assumption, Matterhorn argues that even if the Commission adequately justified a new rule requiring the SFV methodology for section 311 pipelines, Matterhorn contends that the new rule should not be retroactively applied.[212] Matterhorn argues that the application of a new rule can be withheld when applied to past conduct if it would result in "manifest injustice."[213] Matterhorn states that manifest injustice is determined by balancing: (1) whether the particular case is one of first impression; (2) whether the new rule represents an abrupt departure from well-established practice or merely attempts to fill a void in an unsettled area of law; (3) the extent to which the party against whom the new rule is applied relied on the former rule; (4) the degree of the burden which a retroactive order imposes on a party; and (5) the statutory interest in applying a new rule despite the reliance of a party on the old standard.[214] Matterhorn

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[208] *Id.* at 9-10, 12, 30-33 (citing *U.S. v. Chrysler*, 158 F.3d 1355, 1356 (D.C. Cir. 1998)).

[209] *Id.* at 12, 31.

[210] *Id.* at 12-13.

[211] *Id.* at 30.

[212] *Id.* at 21, 31.

[213] *Id.* at 31 (citing *Thorpe v. Hous. Auth. of the City of Durham*, 393 U.S. 268 (1969)).

[214] *Id.* at 31-32 (citing *Clark-Cowlitz Joint Operating Agency v. FERC*, 826 F.2d

contends that the first three factors have been met here, and that the burden imposed on Matterhorn by destabilizing its operations and "introducing confusion among shippers as to the hierarchy of applicable transportation rates" weighs against retroactive application.[215] Matterhorn also argues that the SOC Order does not serve a statutory interest under the NGPA that would justify retroactive application.[216] Matterhorn states that the SOC Order's findings introduce regulatory uncertainty, undermine rate stability, may discourage participation in the section 311 program, and increase commercial risks.[217]

2. Commission Determination

60. We disagree with Matterhorn's characterization on rehearing that the SFV methodology is a "new" Commission policy, which, if applied to Matterhorn, would be retroactive.[218] As explained above, the use of the SFV methodology is a longstanding Commission policy and its application to Matterhorn is therefore not retroactive. Moreover, our confirmation of the Commission's longstanding SFV policy further provides the regulatory certainty sought by Matterhorn. In any event, even if Matterhorn were correct in characterizing the SFV methodology as a "new" policy, we would not be persuaded that its application to Matterhorn is not permissible. It is well settled that the Commission may establish policies of general applicability in an individual adjudication.[219] Not only may the Commission change its policies in the course of a

1074, 1093 (D.C. Cir. 1987) (Mikva, J., dissenting)).

[215] *Id.* at 32.

[216] *Id.* at 32-33.

[217] *Id.* at 13, 34-35.

[218] *Id.* at 31.

[219] *See*, *e.g.*, *NLRB v. Bell Aerospace Co.*, 416 U.S. 267 (1974).

specific adjudication,[220] but the Commission may apply new policies for the first time to the parties involved in that adjudication.[221]

61. Nor do we agree that the doctrine of manifest injustice precludes the application of the SFV methodology in this circumstance.[222] This doctrine does not apply here because the Commission has applied its established policy to other NGPA pipelines.[223] In any event, we do not find that manifest injustice would result from this policy were it being applied retroactively because, on balance, the following factors weigh against such a finding: (1) this is not a case of first impression in light of *ANR v. FERC*; (2) the Commission's illustrative appendix in the SOC Order demonstrates how Matterhorn could implement its directives and helps to reduce the regulatory burden of recalculating Matterhorn's rates; and (3) the Commission has a strong statutory interest in maintaining the SFV methodology among all its jurisdictional pipelines to promote transparency and competition.

E. Motion for Stay and Compliance Filing

62. Matterhorn's expedited motion sought a stay or alternatively, waiver of the deadline for complying with the Commission's directive until after the Commission has ruled on the merits of its rehearing request. For the reasons described above, we dismiss Matterhorn's expedited motion for stay or waiver as moot.

63. Although Matterhorn's rehearing request and transmittal letter accompanying its compliance filing attest that it has submitted a revised SOC that complies with the SOC

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[220] *FCC v. Fox Television Stations, Inc*., 556 U.S. 502, 515-516 (2009); *In re Permian Basin Area Rate Cases*, 390 U.S. 747, 784 (1968); *see also State Farm*, 463 U.S. at 42 ("[W]e fully recognize that regulatory agencies do not establish rules of conduct to last forever.") (internal quotations omitted); *Greater Bos. Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970) (an agency may change its course as long as it "suppl[ies] a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored."), *cert. denied*, 403 U.S. 923 (1971).

[221] *NLRB v. Bell Aerospace Co.*, 416 U.S. at 292-294; *SEC v. Chenery Corp.*, 332 U.S. 194, 202-204 (1947); *Mo.-Kan.-Tex. R. Co. v. U.S.*, 632 F.2d. 392, 409 (5th Cir. 1988).

[222] *See* Rehearing Request at 31-32.

[223] *Supra* note 62.

Order,[224] we find the revised Statement of Rates filed in Docket No. PR25-11-001 does not fully comply with the SOC Order's directives.[225]

64. Specifically, Matterhorn's compliance filing proposes a one-part volumetric rate that does not separate out the demand and usage components as required by the SFV methodology in its minimum and maximum firm rates.[226] Instead, Matterhorn's compliance filing proposes a one-part firm rate that recovers its fixed costs in the maximum rate and its variable costs in the minimum rate. For these reasons, we reject Matterhorn's compliance filing, and direct Matterhorn to revise its SOC, as discussed here and in the SOC Order.

The Commission orders:

(A) Matterhorn's request for stay or alternatively, waiver, is dismissed as moot as discussed in this order.

(B) Matterhorn's compliance filing is rejected and Matterhorn is directed to submit a further compliance filing, within 30 days, as discussed in this order.

(C) In response to Matterhorn's request for rehearing, the SOC Order is hereby modified and the result sustained, as discussed in the body of this order.

By the Commission.

(S E A L)

Carlos D. Clay,
Deputy Secretary.

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[224] *See* Rehearing Request at 8-9 ("Matterhorn is adopting the Commission's illustrative SFV rate calculation solely for purposes of the compliance filing"); Matterhorn Compliance Filling at 2-3 ("Matterhorn submits under protest a revised SOC that includes an updated Statement of Rates that adopts the "Illustrative SFV Rates" set forth in Table 4 of the [SOC] Order Appendix.").

[225] Nor does Matterhorn accurately adopt the illustrative rates appended to the SOC Order, as it alleges.

[226] Compliance Filing, Ex. B.